

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1995 SESSION

FILED

December 13, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

V.

THOMAS MICHAEL STONE,

Appellant.

)
) C.C.A. No. 02C01-9503-CC-00063
)
) Henry County
)
) Hon. Julian P. Guinn, Judge
)
) (Child Rape, Rape, & Incest)
)
)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

A jury found appellant, Thomas Michael Stone, guilty of rape of a child, rape, and incest. He was sentenced to fifteen years, eight years, and three years confinement to be served concurrently. On appeal, appellant challenges the sufficiency of the evidence. We affirm.

At trial, the victim's testimony reflects that her birth date is November 15, 1980, and that appellant is her natural father. She testified that on Halloween of 1993 appellant awoke her from her sleep, "started kissing [her] and . . . put his fingers in [her vagina]." She also testified that on or about November 26, 1993, appellant kissed her, touched her vagina, and had sexual intercourse with her. A pediatrician testified that the results of victim's physical examination were consistent with a history of sexual intercourse.

At trial, appellant's sister stated that appellant lived with her when the alleged incidents occurred. She also testified that when the victim spent the night with appellant, they slept together, by themselves, in her four year old's bedroom. She recalled hearing suspicious noises (movement in the bed) and finding bloody sheets and panties. Although surmising that "something might be going on other than what should have been going on," she was afraid to open the bedroom door.

In challenging the sufficiency of the evidence, appellant refers to inconsistencies which he alleges undermine the victim's credibility. First, appellant contends that on Halloween 1993, he and the victim spent the night at his sister's residence. At trial, his sister also testified that "I believe they stayed at my house" on Halloween 1993. The victim, however, testified that the 1993 Halloween incidents occurred at Gary Brisendine's home. Second, he argues that the alleged incidents could not have taken place on the night of October 31,

1993, because that was a Sunday and the victim's mother had picked her up that Sunday afternoon. Appellant's other grounds for reversal either go to credibility issues or lack legal merit.

Great weight is accorded jury verdicts in criminal trials. Jury verdicts accredit state's witness and resolve all evidentiary conflicts in the state's favor. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). On appeal, the state is entitled to both the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978). Moreover, guilty verdicts remove the presumption of innocence, enjoyed by defendants at trial, and replace it with a presumption of guilt. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). Appellants, therefore, carry the burden of overcoming a presumption of guilt when appealing jury convictions. Id.

When appellants challenge the sufficiency of the evidence, this Court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); Tenn. R. App. P. 13(e). The weight and credibility of a witness' testimony are matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292 (Tenn. Crim. App. 1978).

We find that the victim's testimony at trial set forth the essential elements of the convicted offenses. The victim testified that on Halloween 1993, prior to her thirteenth birthday, appellant kissed and digitally penetrated her. In regard to count two, she testified that appellant kissed her, digitally penetrated her, and inserted his penis into her vagina. As to count three, it was uncontroverted that appellant was her natural father.

The victim testified that the October 1993 incidents occurred on a Saturday night which she related to as being Halloween. Taken in a light most favorable to the prosecution, the jury may have reasonably inferred that in the victim's mind Saturday, October 30, 1993, was Halloween because the children celebrated by trick-or-treating on Saturday night rather than Sunday night. In regard to the inconsistencies of testimony concerning location, the jury chose to accredit the victim's testimony. Assessing the credibility of a witness is exclusively "the purview of the jury." State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993).

Upon listening to the testimony at trial, viewing the witness' demeanor, and considering the witness' testimony in light of all the facts in the case, the jury chose to accredit the victim's testimony. That the jury accepted the veracity of the victim's testimony is not a basis for relief. Accordingly, reviewing the evidence in a light most favorable to the state, we conclude that the record amply supports the jury verdicts on all counts.

AFFIRMED

PAUL G. SUMMERS, JUDGE

CONCUR:

JOE B. JONES, JUDGE

WILLIAM M. BARKER, JUDGE